

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

FILED
DATE: 3-23-2011
5:14 O'Clock P.M.
JEANNE HICKS, CLERK
BY: T. Brogdon
Deputy

DIVISION PRO TEM B
HON. WARREN R. DARROW
CASE NO. V1300CR201080049

JEANNE HICKS, CLERK
BY: T. Brogdon, Deputy Clerk
DATE: March 23, 2011

TITLE:
STATE OF ARIZONA,

COUNSEL:
Yavapai County Attorney
Sheila Polk/Bill Hughes,
(Via OnBase)
(For Plaintiff)

(Plaintiff)

v.

JAMES ARTHUR RAY,
(Defendant)

Thomas K. Kelly,
(Via electronic mail)
(Co-Counsel for Defendant)

Luis Li/Brad Brian/Truc Do/Miriam Seifter
MUNGER TOLLES & OLSON LLP,
(Via electronic mail)
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:
TRIAL – Day 20

NATURE OF PROCEEDINGS

COURT REPORTER
Mina Hunt

START TIME: 9:21 a.m.

APPEARANCES: Sheila Polk, Counsel for State
Detective Ross Diskin, Case Agent
James Arthur Ray, Defendant
Tom Kelly, Co-Counsel for Defendant
Luis Li, Co-Counsel for Defendant
Truc Do, Co-Counsel for Defendant
Victim Services Representative

The Court, Counsel, Detective Diskin, Defendant, Victim Services Representative and the Jury are present in the Courtroom.

Melinda Martin having been previously sworn, resumes testimony.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Exhibit 140 is admitted into evidence pursuant to stipulation of Counsel with the understanding that the document is an Angel Valley document, not a JRI document.

The Jury is reminded of the admonition, Melinda Martin is reminded of the Rule for the exclusion of witnesses, excused for a recess and exits the Courtroom.

Court and Counsel discuss Counsel for Defendant's objection to witness testimony, and hearsay. Counsel for Defendant requests the answer be stricken from the last sustained objection, and a cautionary instruction be given from the Court to the Jury as to the reliability of hearsay information and the inability of the Defendant to confront witnesses that live out of the Country, or in this particular case, a Decedent. Discussion ensues.

Counsel for Defendant requests the witnesses provide testimony based on their personal knowledge and within the confines of the Rules of evidence. Counsel for Defendant advises there are significant 6th amendment and 1st amendment problems.

Court advises as to the hearsay aspect, Rule 8033 does not include statements of memory or belief to prove the fact remembered or believed. Discussion ensues regarding Rule 8033 and witness testimony.

Counsel for Plaintiff requests the limiting instruction to inform the Jury, that they're not to consider it for the broader purpose, they can consider it for Kirby Brown's state of mind identical to the limiting instruction they heard when the clip was played.

Court advises the Rule allows for existing mental state, mental feeling and sense of accomplishment.

Discussion ensues regarding witness interviews and disclosure.

The Court advises there does not appear to be a disclosure issue. The Court addresses Rule 8033, and advises the present answer will be stricken.

~~~Recess~~~

At 11:10 a.m. Court reconvenes, all previously appearing parties and the Jury are present.

Court advises the Jury, the objection made prior to the recess was sustained and the answer is stricken from the record.

Melinda Martin resumes testimony.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

The Jury is reminded of the admonition, Melinda Martin is reminded of the Rule for the exclusion of witnesses, excused for the noon recess and exits the Courtroom.

The Court advises of a Bench Memorandum received during the recess. The Court notes there has been no discussion of the lesser included.

The Court addresses the Bench conference regarding objections, and directs the parties to be conscious of the need for foundation, that the witness has knowledge and that it is not a question that essentially supplies an answer or may lead to an improper response.

~~~Noon Recess~~~

At 1:36 p.m. Court reconvenes, all previously appearing parties and the Jury are present.

Melinda Martin resumes testimony.

Exhibits 230, 279, 298, 311, 316, 553, 554, 555 and 557 are admitted into evidence pursuant to stipulation of Counsel.

The Jury is reminded of the admonition and excused for a recess.

~~~Recess~~~

At 3:00 p.m. Court reconvenes, all previously appearing parties and the Jury are present. The witness is not present.

The Court advises it has been brought to the attention of the Court of media attempting to make contact with Jurors and ask questions regarding this case. The Court advises of the importance of the admonition.

Melinda Martin enters the Courtroom and resumes testimony.

The Jury is reminded of the admonition and excused for a recess.

~~~Recess~~~

At 4:18 p.m. Court reconvenes, all previously appearing parties and the Jury are present.

Melinda Martin resumes testimony.

Exhibits 785, 786 and 787 are admitted into evidence pursuant to stipulation of Counsel.

The Jury is reminded of the admonition, advised to return on March 24, 2011 at 9:15 a.m. and excused for the evening recess. Melinda Martin is excused for the evening recess. The Jury and witness exit the Courtroom.

Counsel for Plaintiff requests the social security number of the witness be redacted on exhibit 785. Counsel for Defendant has no objection. **IT IS ORDERED** redacting the social security number of the witness on exhibit 785.

Counsel for Plaintiff requests the charts Counsel for Defendant drew on the easel in open Court today be preserved. Counsel for Defendant has no objection. **IT IS ORDERED** preserving the charts for the record.

Counsel for Plaintiff advises of discovery violations made by Counsel for Defendant during witness testimony, and requests the Court order Counsel for Defendant immediately provide all documents they intend to use during this Trial.

Discussion ensues regarding disclosure, and statements under Rule 613. Counsel for Plaintiff addresses and recites Rule 15.2(c). Counsel argue their positions. Counsel for Plaintiff requests from this point forward Counsel for Defendant comply with Rule 15.2 and provide all documents they intend to use in examining witnesses unless it falls under the Rule 613 exception, or that this Court pursuant to the rules, preclude them from using any documents if they are not going to comply with Rule 15.2.

The Court stands adjourned for the day.

END TIME: 5:14 p.m.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)
Stone & Magnanini, Co-Counsel Brown Family (e)
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)
Division PTB (e)
Victim Services (e)
Court Administration
Customer Service Supervisor, Verde